

The 27th March, 1979

No. 11 (112)-3Lab-78/3619.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act, No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Auto Pins India (Regd.), Faridabad.

BEFORE SHRI NATHU RAM SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 532 of 1978

between

SHRI DES RAJ, WORKMAN AND THE MANAGEMENT OF M/S AUTO PINS INDIA, (REGD.), FARIDABAD

Present:—

Shri Onkar Parshad, for the workman.

Shri Satish Ahuja, for the management.

AWARD

By order No. ID/52131, dated 22nd November, 1978, the Governor of Haryana referred the following dispute between the management of M/s. Auto Pins India (Regd.), Faridabad, and its workman Shri Des Raj, to this Tribunal for adjudication, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act :—

Whether the termination of services of Shri Des Raj was justified and in order ? If not, to what relief is he entitled.

On receipt of the order of reference, notices were issued to the parties. The parties appeared. The management stated that the workman has received all his dues and claims in full and final settlement of the dispute and produced two photostat copies of the vouchers witnessing payment to the workman. The representative for the workman wanted to confirm its fact. Therefore, the case was adjourned to 15th March, 1979. On 15th March, 1979 the representative for the workman had no objection to the statement of the representative for the management made previously alleging full and final settlement of the dispute. I, therefore, give my award that the workman has received a sum of Rs. 1,140.85,—vide two vouchers dated 23rd October, 1978 in full and final settlement of his dispute and that in view of the said payment to the workman, the termination of services of the workman shall be deemed justified and in order. The workman shall not be entitled to any relief.

NATHU RAM SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated the 16th March, 1979.

No. 235, dated 19th March, 1979

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act.

NATHU RAM SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 11(112)3 Lab-79/3620.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s. Anand Synthetics (P) Ltd., Faridabad.

BEFORE SHRI NATHU RAM SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL HARYANA, FARIDABAD

Reference No. 127 of 1978

between

SHRI RAJINDER MANZI, WORKMAN AND THE MANAGEMENT OF M/S. ANAND SYNTHETICS (P) LTD., FARIDABAD

Present:—

Shri P. K. De, for the workman.

Shri O. P. Tyagi, for the Management.

AWARD

By order No. ID/FD/14-78/17725, dated 9th May, 1978, the Governor of Haryana referred the following dispute between the management of M/s Anand Synthetics (P) Ltd., Faridabad and its workman Shri Rajinder Manzi, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Rajinder Manzi was justified and in order ?
If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, five following issues were framed on 18th August, 1978 :—

1. Whether the dispute is not an Industrial Dispute as defined in the Act ?
2. Whether the workman did not raised his demand directly on the management ? If not, to what effect ?
3. Whether the demand has been raised at a belated stage ? If so, to what effect ?
4. Whether the Government has not applied its mind before referring the dispute ? If so, to what effect ?
5. Whether the termination of services of Shri Rajinder Manzi was justified and in order ?
If not, to what relief is he entitled ?

And the case was fixed for the evidence of the workman. The workman examined himself as his own witness and closed his case. Then the case was fixed for the evidence of the management.

It was at this stage that a settlement was arrived at between the parties. According to which the workman received a sum of Rs 1,300 only, from the management in cash before this Tribunal in satisfaction of all his claims, dues and the dispute further more and workman shall have no dispute claim or whatsoever thereafter.

I, therefore, give my award that the termination of services of Shri Rajinder Manzi was justified and in order. He is not entitled to any relief. He has already received a sum of Rs 1,300 only in full satisfaction of all his dispute and claims whatsoever.

NATHU RAM SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated the 15th March, 1979.

No. 234, dated the 19th March, 1979.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act 1947.

NATHU RAM SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 11(112)-3Lab-79/3621.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s. Escorts Ltd. Plant-II, Mathura Road, Faridabad.

SHRI KRISHAN KUMAR WORKMAN
AND THE MANAGEMENT OF M/S
ESCORTS LTD., PLANT-II, MATHURA
ROAD, FARIDABAD.

Present:

Shri H. R. Dua, for the workman.

Shri K. K. Khuller, for the
management.

AWARD

By order No. ID/FD/17-B-75/1796, dated 14th January, 1976, the Governor of Haryana, referred the following dispute between the management of M/s. Escorts Ltd., Plant-II Mathura Road,

BEFORE SHRI NATHU RAM SHARMA,
PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL, HARYANA,
FARIDABAD.

Reference No. 12 of 1976.

between

Faridabad and its workman Shri Krishan Kumar, to this Tribunal, for adjudication in exercise of the powers conferred by clause (d) of sub section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Krishan Kumar was justified and in order? If not, to what relief is he entitled?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties the following issues were framed by my learned predecessor on 9th June, 1976 and the case was fixed for the evidence of the management:—

- (1) Whether the workman tendered his resignation and was duly accepted by the management and orders of the acceptance of the resignation were conveyed to him?
- (2) In case of non-proof of issue No. 1, whether the workman lost his lien on his job as a result of his continued absence for the prescribed period under the Certified Standing Orders of the Company?
- (3) In case of non-proof of issues No. 1 and 2, whether the termination of services of Shri Krishan Kumar was justified and in order? If not, to what relief is he entitled?

Thereafter the representative for the management moved an application for amendment of issues. The representative for the workman filed its reply. The parties were heard on the application and,—vide my order, dated 10th November, 1976, issue No. 2 as previously framed on 9th June, 1976 was treated as issue No. 1 and the following issues were framed:—

- (2) Whether the dispute is not an Industrial Dispute under section

2-A of the Industrial Disputes Act, if not, to what effect?

- (3) Whether the workman submitted his demand to the management before referring to the Conciliation Officer? If not, to what effect?
- (4) Whether the workman submitted his resignation to his own and of his free will? If so, to what effect?
- (5) If issue No. 4 is not proved, whether the resignation was procured by the management under force or under coercion?
- (6) Whether the workman can take the plea of force and coercion in the matter of the said resignation without giving particular of the same?
- (7) What is the effect of not giving the particulars of force and coercion in the matter of resignation?

Issues No. 2 and 3 were treated as preliminary issues and the case was fixed for the evidence of the parties. The workman examined Shri H. R. Dua his authorised representative as WW-1 and closed his case. At this state both the parties stated and admitted that there was no necessity of trying issue No. 2 and 3 as preliminary and all the issues be tried together. Then the case was fixed for the evidence of the management. The management examined Shri Rajinder Singh a vernacular in the Court of the S.D.M. Ballabgarh as MW-1, Shri Deep Chand constable as MW-2, Shri Ram Singh Sub-Inspector as MW-3, Shri P. C. Agarwal Deputy Personnel Manager as MW-4 and closed their case, in the affirmatives. Then the case was fixed for the evidence of the workman. The workman examined himself as WW-2 and closed his case. Then the case was fixed for arguments. Arguments were heard. I now proceed to decide issues-wise.

ISSUE NO. 1

Issue No. 1 relates as to whether the workman lost his lien on his job as a result of his continued absence for the prescribed period under the Certified Standing Orders of the company. MW-1 stated from the court file of the C.J.M. Ballabgarh that the workman was involved in a case under section 411/381 of the I.P.C. which was instituted on 24th March, 1973 and was decided on 17th November, 1974. The workman was enlarged on bail on 28th November, 1973. In cross-examination he could not state as to for how many days the workman remained in police custody or judicial lock-up and the case related to F.I.R. No. 219 of 23rd November, 1972. He stated that the workman was acquitted giving him the benefits of doubt and the case property was returned to the Excorts factory plant number-II. M.W. 2 stated that the workman was arrested on 25th November, 1972. He remained in police custody up to 28th November, 1972 and was arrested on 25th November, 1972 and was bailed out on 28th November, 1972. The workman together with another workman Shri Subhash was arrested under section 64 Cr.P.C. The time recorded is 8-40 a.m. on the Zimny for 25th November, 1972. Another workman was also remanded to police custody up to 28th November, 1972. The Zimny did not record as to from what place and at what time the workmen were called by the police. M.W. 3 Sub-Inspector Police had brought the F.I.R. No. 219 of 23rd November, 1972, together with the file and deposed that the workman was arrested on 25th November, 1972 and was produced before the Magistrate on the same day. The workman was arrested at 10.00 a.m. and the time 8.40 a.m. recorded in the Zimny relates to the time when the police party left the police station. The F.I.R. was registered on a written complaint by Shri R. N. Pasi, the Chief Security Officer of the management who had produced four pieces of machine parts and also Shri Bishan Dass who was present before the Magistrate on 24th November, 1972. M.W. 4 deposed that the workman was

appointed on 6th July, 1970 and that the workman had submitted his resignation. Exhibit M-1 to him on 23rd November, 1972 and he took him with Exhibit M-1 to the Personnel Manager Shri P. S. Minash who accepted it. The management communicated the acceptance of resignation,—vide letter, dated 23rd November, 1972, although it was accepted in the presence of the workman who was with him at that time. He deposed that the workman did not come to the factory after 23rd November, 1972. The duty hours of the workman on 23rd November, 1972, were from 8-00 a.m. to 4-30 p.m. Shri Minash left the services of the management some time prior to middle of 1975 and his whereabouts were not known. He also produced a copy of Certified Standing Orders, Exhibit M-4. He denied a suggestion that the police arrested the workman and another workman Shri Subhash in their factory premises at 5-30 p.m. on 23rd November, 1972. The duty hours of Shri Subhash were 8-00 a.m. to 4-30 p.m. but he had left after attending his duty at 8-00 a.m. for 3-4 hours. He denied a suggestion that the management got arrested the workman and, therefore, did not communicate acceptance of resignation by registered A.D. He further deposed that the workman was arrested in the process of law and they had only lodged the F.I.R. W.W. 2 the workman concerned deposed that he did not resign of his own and the resignation was under coercion. The management had called the police. The police had reached the factory and he was taken to the police station. He denied the resignation. He stated that he was acquitted by criminal court. He further deposed that his resignation was not accepted. He further stated that after he was bailed out he had gone to the factory but was not taken on duty. Shri Pasi had told him to report for duty in case he was acquitted but was not taken on duty. He admitted that he was bailed out on 28th November, 1972. He admitted in cross-examination that he did not complain to any body that he had resigned under coercion at the police station. He also admitted in cross-examination that he did not write any

letter to the General Manager or to any officer of the management that he was not taken on duty after he had been bailed out. He denied a suggestion that he did not attend the factory for joining duty. He also denied that he had deposed falsely. He also admitted in cross-examination that there were several officers such as Vice-President, General Manager and another Manager but he did not complain to any of them in writing.

Exhibit M.3 is attendance sheet in which the workman is shown as absent from 24th November, 1972. In the column provided for remarks, it is mentioned that the workman resigned with effect from 24th November, 1972. In the attendance sheet for December, 1972, nothing has been shown against the name of the workman. Exhibit M. 4 is a copy of Certified Standing Orders of the management. Exhibit W.2 is a postal receipt, dated 20th August, 1974, in relation to a notice by the Advocate of the workman, Exhibit W. 1 reading that the workman has been acquitted by the Magistrate, 1st Class, Ballabgarh and the workman had submitted his resignation when was forced by the police authorities and the resignation was not with his consent and free will. This notice further mentions that the resignation was void ab initio and he continued to be in the employment and was entitled to full back wages and re-employment. It is noteworthy that the notice did not mention that after acquittal, the workman had been going to the factory for joining his duty. The notice is dated 17th August, 1974. Exhibit W. 3 is the A.D. form. Exhibit M. 1 is the resignation of the workman, dated 23rd November, 1972, reading that the domestic circumstances of the workman were bad. He was unable to continue in service. He shall run a shop and his resignation be accepted immediately and he should be paid fully and finally. Shri Minash had accepted the resignation with effect from 24th November, 1972 on 23rd November, 1972. The resignation is addressed to the Personnel Manager. Exhibit M.2 is a copy of communication of acceptance of resignation to the workman, dated 23rd

November, 1972. The workman was released on bail on 28th November, 1972. Thereafter he could report for duty but he did not report for duty. He neither took leave and remained absent throughout. Notice of the Advocate for the workman reads that the workman was acquitted on 31st July, 1974. Although the workman has stated that he had gone to the factory after he was bailed out but he was not taken on duty. The workman was bailed out on 28th November, 1972 and after that he wrote no letter; application or complaint to any authority or to any officer of the management as well as to any authority that he was not taken on duty, even he did not make any complaint to any body that he had resigned under coercion at the police station although he had admitted the resignation, Exhibit M. 1, to be in his own hand. He did not make any complaint to any officer that he attended the factory after being bailed out but was not taken on duty for a very long period till 17th August, 1974, when his Advocate gave notice to the management. Even this notice did not mention that he had gone to the factory for joining duty and was not taken on duty. The notice mentions only that his resignation was illegal and was under force of the police authorities. When M.W.3 Shri Ram Singh, Sub-Inspector Police, was examined, who was with Shri Ram Avtar, A.S.I., who had arrested the workman, no question has been put by the representative for the workman that the police had exercised force to obtain resignation from the workman. It seems that the workman might have submitted this resignation in order to escape criminal case. Although a question has been put to Deputy Personnel Manager M.W. 4 that the original of Exhibit M. 2, the acceptance of resignation was never sent to the workman, which he denied, but the question that the resignation was obtained under force of police, has not been put even to this witness, although the workman admitted the resignation in his own hand and stated that it was taken from him when he was in police custody and at that time Shri P. C. Agrawal, Shri R. N. Pasi and Shri Ram Avtar,

A.S.I., and some other constables were there. I have gone through the Standing Orders, Exhibit M. 4. Sub-clause (4) of clause 22 of the Certified Standing Orders provides that a workman lost his lien on his appointment if he remains absent without sanctioned leave unless he returns within 10 consecutive days of the commencement of the absence and explains to the satisfaction of the Manager, the reasons of his absence or his inability to return. In this case the workman has remained for a very long period extending from grant of his bail till he gave notice to his Advocate, dated 17th August, 1974, sent by registered post on 20th August 1974. Except a bald statement of the workman that he went to the factory after being bailed out but was not taken on duty, there is no evidence at all in support of his statement and in the circumstance when he complained to none during this very long period and kept silent, his lone statement is not believable and does not inspire any belief. It is very clear from the evidence on the file that the workman remained absent for more than a year or so. In these circumstances, referring to the sub-clause (4) of clause 22 of the Certified Standing Orders, I find this issue in favour of the management.

ISSUE No. 2:

When the workman has lost his lien by his own act by remaining absent for a very very long period more than a year, this dispute is not an industrial Dispute, as section 2(a) of the Industrial Disputes Act deals with discharge, dismissal, retrenchment or otherwise termination of services, and does not deal with loss of lien by the act of the workman. Had the management terminated the services of the workman, it would have been a dispute under section 2(a) of the Industrial Disputes Act but loss of lien, as discussed above is not covered by section 2(a). I, therefore, decide this issue in favour of the management.

ISSUE No. 3:

This issue is proved by the evidence of Shri H. R. Dua, W. 1. More over it is

now as settled law that submission of demand to the management before reference, is not a pre-condition to constitute an Industrial Dispute. I, therefore, decide this issue in favour of the workman.

ISSUE No. 4:

The resignation, Exhibit M. 1 is in the hand of the workman. He had admitted it. It has been accepted by the concerned officer. It is, dated 23rd November, 1972. The resignation is in a period when an F.I.R. was or was to be lodged. The F.I.R. is dated 23rd November, 1972. The resignation is also 23rd November, 1972. It is no where in evidence whether the F.I.R. was lodged first or the resignation was written first. The time of F.I.R. has not been given in evidence. The workman has stated that he gave it in the police station, but he was arrested on 25th November, 1972 and not on 23rd November, 1972. There is no cross-examination by the representative for the workman to any police officer or the Deputy Personnel Manager that the resignation was obtained by force. Moreover particulars of force have also not been stated as to what force was applied to the workman and by whom. He has simply stated that he submitted his resignation in police station under force of the police which is a vague statement. He should have stated that what force and how it was exercised on him and by whom. He should have named the person or the designation of the persons who had exercised force on him. There is want of evidence to prove that the resignation was obtained by use of force but the issue is whether the workman resigned of his own and of his free will. The workman has stated that he had not resigned of his own and of his free will. When exercise of force is not proved free will may be inferred. But the F.I.R. is also dated 23rd November, 1972 and the resignation is also dated 23rd November, 1972. It is in suspicious circumstance whether the workman resigned of his own and of his free will or not. This issue is decided accordingly. He might be fearing the fear of prosecution.

ISSUE No. 5

It is not proved that the resignation was procured by the management under force or under coercion. The management did not exercise force and coercion. Neither it is stated so by the workman himself. The workman has stated that he resigned in police station under the force of the police. He has also not stated that the management used force or coercion, hence this issue is decided accordingly.

As a result of my findings on the issues, I answer the reference and give my award that the workman lost his lien on his job by his act of his continued absence for a very very lengthy period then prescribed under the Certified Standing Orders and that in that event this dispute is not an Industrial Dispute. Further that the management did not terminate the services of the workman, hence the question of justifiability of termination of services does not arise. The workman is not entitled to any relief.

ISSUE No. 6

Although the law requires to take the plea of force and coercion when particulars of force and coercion are given and a person who pleads force and coercion should give the particulars of force and coercion. As discussed above, the workman has not given the particulars of force and coercion but this issue is not of much importance when I have held under issue No. 5 that the force or coercion by the management has not been proved. The law requires that particulars of force and coercion should be given and the workman has not given particulars of force and coercion. I, therefore, decide this issue accordingly.

Dated the 15th February, 1979.
28th February, 1979.

NATHU RAM SHARMA,

Presiding Officer,
Industrial Tribunal,
Haryana, Faridabad.

No. 219, dated 16th March, 1979.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

ISSUE No. 7

The fact of not giving the particulars of force and coercion in the matter of resignation is that force and coercion cannot be proved without particulars. I decide this issue accordingly.

NATHU RAM SHARMA,

Presiding Officer,
Industrial Tribunal,
Haryana, Faridabad.

M. KUTTAPPAN, Secy.

POWER DEPARTMENT

The 23rd March, 1979

No. 9/81/78/DSPWII.—Whereas the land described in the Haryana Government Notification No. 9/81/78/DSPWII, dated 23rd January, 1979, issued under section 6 of the Land Acquisition Act, 1894 has been declared to be needed at partly at public expense and partly at the expense of Beas Construction Board, for a public purpose, namely, for the construction of 400 K.V. Panipat-Dehar Tower Line in village Sangrana and Nada, Tehsil Kalka, District Ambala.

Now, therefore, in exercise of the powers conferred by section 7 of the Land Acquisition Act, 1894, the Governor of Haryana hereby directs the Land Acquisition Collector, Public Works (I and P) Department, Ambala City to take order for the acquisition of the land described in the specification appended to the declaration published with the aforesaid notification.

HARGO LAL, Under Secy.